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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

DAVID ABITBOL; individually and on) Case No. 2:23-cv-06229-RGK-BFM
behalf of all others similarly situated,)

Plaintiff,) **Joint Rule 26(f) Report**
)

vs.)
)

SENIOR LIFE SERVICES, INC., and)
DOES 1 through 10, inclusive, and each)
of them,) **Honorable Judge R. Gary Klausner**
)
Defendant.)
)

Pursuant to the Court's Order Setting Rule 16(b)/26(f)
Scheduling Conference (Dkt. #11), Plaintiff, David Abitbol ("Plaintiff"), and
Defendant, Senior Life Services, Inc., ("Defendant"), hereby submit Joint Rule
26(f) Report.

1 **1. STATEMENT OF THE CASE**

2 Plaintiff:

3 Plaintiff brings this Class Action Complaint for damages, injunctive relief,
4 and any other available legal or equitable remedies, resulting from the illegal actions
5 of Defendant in negligently and willfully contacting Plaintiff on Plaintiff's cellular
6 telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227
7 et seq., ("TCPA") and related regulations.

8 Plaintiff is the regular carrier and exclusive user of the cellular telephone
9 assigned the number ending in -6443. Plaintiff has never had a business relationship
10 with Defendant. Plaintiff never provided Defendant with prior express consent to
11 contact him on his phone via a telephone call. Plaintiff's telephone number ending
12 in -6443 has been on the national Do Not Call list since on or about February 18,
2020.

13 Nonetheless, on various instances including on January 16, 2021; January 18,
14 2021; and February 3, 2021, Defendant and its agents called Plaintiff multiple times
15 on his cell phone, attempting to sell Plaintiff life insurance. Plaintiff answered some
16 of these calls, at which time he heard a click, and thereafter heard a live
17 representative of Defendant begin speaking. Defendant and its agent utilized both
18 an "automatic telephone dialing system" ("ATDS") to initiate calls to Plaintiff and
19 Class Members, and a prerecorded voice to communicate sales pitch messages to
20 Plaintiff and Class Members. Plaintiff and Class Members never provided express
21 consent to Defendant prior to Defendant placing the calls to Plaintiff. As such, both
22 acts (use of ATDS and prerecorded voice calls) give rise to separate claims for
violation of the TCPA.

1 Defendant's representatives then made various attempts to sell Plaintiff and
2 Class Members its services. The calls Defendant made to Plaintiff and Class
3 Members violated 47 U.S.C. § 227(b)-(c).

4 Defendant: Defendant denies Plaintiff's allegations. Defendant obtains prior
5 express written consent to contact possible clients via telephone, including in the
6 instance of Plaintiff. This constitutes a complete defense to Plaintiff's claims that
7 Defendant in any way violated the Telephone Consumer Protection Act.

8 Defendant further denies Plaintiff's characterization that it used an
9 Automated Telephone Dialing System ("ATDS") as that term is currently defined
10 under the TCPA and it's relevant case law, including the United States Supreme
11 Court case of *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163 (2021). Plaintiff is pushing
12 an unorthodox interpretation of an ATDS that is unsupported by case law. The
13 Court should reject this interpretation.

14 Finally, this matter is not a candidate for class certification for several
15 reasons, not the least of which is Plaintiff is not a viable class representative given
16 the aforementioned prior express written consent and other reasons to be unearthed
17 during discovery.

18 **2. SUBJECT MATTER JURISDICTION**

19 Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises under
20 a federal statute, the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.
21 Venue is proper in the United States District Court for the Central District of
22 California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because Defendant does
business within the State of California and Plaintiff resides within this district.

1 **3. LEGAL ISSUES**

2 Plaintiff:

3 The legal issues in dispute in this matter are as follows:

- 4 • Whether Defendant used an “automatic telephone dialing system,”
- 5 (“ATDS”) in the alleged communications, as defined by 47 U.S.C. §
- 6 227 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A);
- 7 • Whether Defendant utilized a “prerecorded voice” as prohibited by 47
- 8 U.S.C. § 227(b)(1)(A);
- 9 • Whether Defendant’s communications constituted calls that were not
- 10 for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i);
- 11 • Whether Defendant and their agents received Plaintiff’s and the Class’
- 12 prior express consent to receive unsolicited calls, pursuant to 47 U.S.C.
- 13 § 227 (b)(1)(A);
- 14 • Whether there was an established business relationship between
- 15 Defendant and the members of the DNC class;
- 16 • Whether Defendant’s communications, or its agents, violated 47
- 17 U.S.C. § 227(b)(1) and 47 U.S.C. § 227(c);
- 18 • Whether this action meets the class requirements set forth in Fed. R.
- 19 Civ. P. 23;

20 Defendant: Defendant agrees with the legal issues presented by Plaintiff

21 above.

22 **4. PARTIES AND NON-PARTY WITNESSES**

Plaintiff:

 Parties: Plaintiff, David Abitbol. Defendant Senior Life Services, Inc.

1 Witnesses: Plaintiff, David Abitbol. Plaintiff reserves the right to name
2 additional witnesses should the need arise to do so, such as to incorporate facts
3 obtained during discovery. Plaintiff also expects to depose Defendant's Federal
4 Rule of Civil Procedure 30(b)(6) witness(es).

5 Defendant: Defendant agrees with the witnesses outlined by Plaintiff above.
6 Defendant further anticipates the need for expert witnesses given some of the novel
7 arguments made Plaintiff. Experts may also be necessary for class identification
8 and certification.

9 **5. RELIEF**

10 Plaintiff:

11 Pursuant to 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each ATDS
12 Class member \$500.00 in statutory damages, for each and every violation, pursuant
13 to 47 U.S.C. § 227(b)(3)(B), and for himself and each ATDS Class member
14 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
15 § 227(b)(3)(C). Pursuant to 47 U.S.C. §227(c)(5), Plaintiff seeks for himself and
16 each DNC Class member \$500.00 in statutory damages, for each and every
17 violation, pursuant to 47 U.S.C. §227(c)(5)(B), and for himself and each DNC Class
18 member \$1,500.00 in statutory damages, for each and every violation, pursuant to
19 47 U.S.C. §227(c)(5)(C). The realistic range of probable damages is difficult to
20 calculate in light of the allegations of a Class whose size is not yet determined.

21 Defendant: Defendant denies Plaintiff is entitled to any relief and seeks the
22 denial of any recovery. Defendant seeks the costs of this action, and, in some
instances, may seek the recovery of its attorney's fees.

1 **6. INSURANCE COVERAGE:**

2 Plaintiff: Not to Plaintiff's knowledge at this stage of litigation.

3 Defendant: Not to Defendant's knowledge at this stage of litigation.

4
5 **7. ANTICIPATED MOTIONS AND SCHEDULING OF MOTIONS**

6 Plaintiff:

7 Plaintiff intends to file a motion for class certification at the appropriate
8 juncture. Plaintiff expects to file a motion for class certification by August 23, 2024.

9 Defendant: Defendant anticipates filing a Motion for Summary Judgment.

10 **8. MANUAL FOR COMPLEX LITIGATION**

11 Plaintiff:

12 Plaintiff does not propose the use of the Manual for Complex Litigation for
13 this matter.

14 Defendant:

15 Defendant does not propose the use of the Manual for Complex Litigation
16 for this matter.

17 **9. DISCOVERY SCHEDULE**

18 Plaintiff:

19 (1) Plaintiff anticipates serving interrogatories, requests for production, and
20 requests for admission to Defendant's alleged communications and use of an
21 "ATDS", Defendant's inclusion of "prerecorded voice" in its calls to Plaintiff and
22 Class Members, Defendant's failure to obtain consent from Plaintiff and Class
23 Members, Class size and contact information, Defendants' policies and practices

1 relating to compliance with applicable law, and other related issues. Plaintiff further
2 anticipates taking the deposition of Defendants' representative with the most
3 knowledge of such issues.

4 (2) Plaintiff does not propose any changes to the limitations on discovery
5 imposed under the Federal Rules of Civil Procedure.

6 Defendant:

7 (1) Defendant anticipates serving interrogatories, requests for production,
8 and requests for admission to Plaintiff's prior express written consent and other
9 matters. Defendant further anticipates taking the deposition of Plaintiff.

10 (2) Defendant does not propose any changes to the limitations on discovery
11 imposed under the Federal Rules of Civil Procedure.

12 **10. EXPERT DISCOVERY**

13 Plaintiff:

14 Plaintiff expects to retain an expert to analyze Defendant's outbound dial list
15 records, and a class member identification expert to run reverse look-up phone
16 number searches.

17 Defendant:

18 Defendant anticipates retain an expert to rebut any expert retained by
19 Plaintiff, and to further provide an opinion on Plaintiff's novel interpretation of an
20 ATDS.

21 **11. ANTICIPATED DISPOSITIVE MOTIONS**

22 Plaintiff:

Plaintiff anticipates filing a summary judgment motion after class
certification has been decided and notice has been sent to the class.

1 Defendant:

2 Defendant anticipates filing a motion for summary judgment as to the prior
3 express written consent provided by Plaintiff.

4
5 **12. SETTLEMENT / ALTERNATIVE DISPUTE RESOLUTION**

6 Plaintiff:

7 Plaintiff is amenable to private dispute resolution discussions with
8 Defendant, including private mediation and/or informal settlement discussions.

9 Defendant:

10 Defendant is amenable to private dispute resolution discussions with
11 Plaintiff, including private mediation and/or informal settlement discussions. The
12 Parties are currently engaged in discussions of an early resolution.

13 **13. TRIAL ESTIMATE**

14 Plaintiff:

15 Plaintiff anticipates that the jury trial of this matter will require
16 approximately five to seven (5-7) court days. Plaintiff contemplates calling 2-3
17 witnesses at trial.

18 Defendant:

19 Defendant anticipates that the jury trial of this matter will require
20 approximately two to three (2-3) court days. Defendant contemplates calling 2-3
21 witnesses at trial.

22 **14. TRIAL COUNSEL**

Plaintiff:

 Todd M. Friedman, Esq.; Adrian R. Bacon, Esq. – Law Offices of Todd M.

1 Friedman, P.C.

2 Defendant:

3 James A. Peterson, Esq., Peterson Legal P.A.

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5 **15. SCHEDULING**

6 Plaintiff:

7 Plaintiff proposes the following discovery, pretrial conference, trial, and cut-
8 off dates:

- 9 • Amendments to pleadings: January 15, 2024;
- 10 • Filing of any motion for class certification: August 23, 2024;
- 11 • Fact discovery cut-off: October 1, 2024;
- 12 • Initial expert reports (if needed): October 7, 2024;
- 13 • Rebuttal expert reports (if needed): October 21, 2024;
- 14 • Expert discovery cut-off: November 4, 2024;
- 15 • Hearings on Motions: November 25, 2024;
- 16 • Pre-trial conference: Week of December 2, 2024;
- 17 • Tentative date for trial: Week of December 9, 2024.

18 Dated: November 20, 2023

Law Offices of Todd M. Friedman, P.C.

19 By: /s/ Todd M. Friedman
20 Todd M. Friedman, Esq.
21 Attorney for Plaintiff
22

1 Dated: November 20, 2023

Peterson Legal P.A.

2
3 By: /s/James A. Peterson

James A. Peterson, Esq.

4 Attorneys for Defendant Senior Life
5 Services, Inc.

1 Filed electronically on this 20th Day of November, 2023, with:

2 United States District Court CM/ECF system

3 Notification sent electronically via the Court's ECF system to:

4 Honorable Judge R. Gary Klausner

5 United States District Court

6 Central District of California

7 And all Counsel of Record as recorded on the Electronic Service List.

8 This 20th Day of November, 2023

9 /s/Todd M. Friedman, Esq.

10 Todd M. Friedman